

**SUBJECT TO CONFIDENTIAL TREATMENT UNTIL
AUGUST 3, 2004**

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-342

July 20, 2004

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure

ORDER DESIGNATING
STANDARD OFFER
PROVIDERS

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Order, we designate Independence Power Marketing, LLC (Independence)¹ as the standard offer provider for the medium non-residential classes in the Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE) service territories, and for 80% of the large non-residential classes in the CMP and BHE service territories. We designate Select Energy, Inc. (Select) as the standard offer provider for 20% of the large non-residential classes in the CMP and BHE service territories. Both designations are for six-month periods, beginning September 1, 2004. The average blended prices for standard offer service for this period will be 6.587¢/kWh for the medium class and 6.483¢/kWh for the large class in CMP's service territory, and 6.649¢/kWh for the medium class and 6.256¢/kWh for the large class in BHE's service territory.

II. BACKGROUND

Maine's Restructuring Act directs the Commission to administer periodic bid processes to select providers of standard offer service. 35-A M.R.S.A. § 3212(2). The arrangement with the current standard offer providers for service to customers in the medium and large standard offer classes in the CMP and BHE service territories terminates on August 31, 2004.² Accordingly, on June 2, 2004, the Director of Technical Analysis initiated the process to solicit bids for the provision of standard offer service to these classes for the period beginning September 1, 2004 by issuing a

¹ Independence is an affiliate of the Goldman Sachs Group, Inc.

² By Order issued September 18, 2001, the Commission designated a standard offer provider for residential and small commercial customers in the CMP and BHE service territories for a 3-year period beginning March 1, 2002. *Order Designating Standard Offer Provider and Directing Utilities to Enter Entitlements Agreements*, Docket No. 2001-399 (Sept. 18, 2001). For this reason, the Commission did not solicit bids for the small classes.

Request for Proposals (RFP).³ The RFP set out the procedure to be followed in soliciting bids and selecting standard offer providers, i.e. winning bidders.

The RFP sought bids for two alternative terms, one for six months and one for a year. In our last three solicitations, we accepted bids for the CMP and BHE medium and large classes for six-month period to minimize the time for which standard offer prices may deviate from prevailing market prices. However, the Director of Technical Analysis also asked for one-year terms to protect against the possibility that the Commission might find the six-month bids to be inadequate.

Pursuant to the RFP, indicative bids were received June 15, 2004. Since that time, our staff has been discussing various non-price terms with bidders. Upon the conclusion of discussions on non-price terms with a sufficient number of bidders, the Director of Technical Analysis asked for final, binding bids to be presented today, July 20, 2004.

III. DISCUSSION

At the outset, we note that, as in our more recent standard offer solicitations, the current process was very competitive and thus standard offer prices will continue to be established by a competitive electricity market as contemplated by the Restructuring Act. Upon review of all the bids received today, and applying the selection criteria specified in section 8(C)(2) and (4) of Chapter 301, we designate Independence as the standard offer provider for 100% of the medium non-residential classes and 80% of the large non-residential classes in both CMP's and BHE's service territory; and Select as the standard offer provider for 20% of the large non-residential classes in both CMP's and BHE's service territory, all for a six-month term beginning September 1, 2004. The average prices are as follows:

	CMP	BHE
Medium Class	6.587cents/kWh	6.649 cents/kWh
Large Class	6.483 cents/kWh	6.256 cents/kWh

The actual prices for both the medium and large classes vary by month, while the large classes prices also vary by time-of-day and include a demand charge. The actual prices are contained in an appendix to this Order.

Our review of the Independence and Select bids indicate that they comply with all requirements of Chapter 301 and RFP (including the security requirements). Additionally, both Independence and Select included bidder conditions with their bids. By designating Independence and Select as standard offer providers, we hereby accept

³ On May 18, 2004 in Docket No. 2004-314, we delegated to the Director of Technical Analysis the authority to decide and carry out all matters related to the development, issuance and conduct of standard offer bid processes.

their bidder conditions and incorporate them into this Order. The bidder conditions, as well as the statements of commitment, are attached as appendices to this Order.

We find that the bidder conditions provide useful clarifications as to the precise nature of the standard offer provider obligations, as well as reasonable protections for the provider with respect to actions of the Commission or the T&D utility. We understand all conditions are satisfied at this time or will be satisfied shortly after we issue this Order. Independence and Select attached modified versions of the Standard Offer Provider (SOP) Service Agreement. We are informed that both versions of proposed SOP standard service agreements are acceptable to both CMP and BHE, and the Director of Technical Analysis,⁴ and that Independence, Select, CMP and BHE will execute the agreements upon issuance of this Order. As requested by Select, we affirm and state that our advice given in the Advisory Opinion Regarding Right and Obligations of Standard Offer Providers issued by the Commission on November 28, 2000 in Docket No. 2000-808 applies to the medium and large class solicitation process. As noted above, we find that the corporate guaranties submitted by the winning bidder satisfy the financial capability requirements of Chapter 301, and our RFP. In fact, both Independence and Select will provide greater security than required by the rule by providing a guarantee for the full cost of replacement standard offer power.

Section 8(C)(2) of Chapter 301 establishes the lowest price as the primary selection criteria in considering standard offer bids. However, section 8(C)(4) requires the Commission to select three standard offer providers within a utility service territory if this can be accomplished without increasing standard offer prices within any standard offer class by more than 1.5%. The acceptance of the lowest bids in the solicitation result in the designation of Independence for the classes and percentages as described above. Section 8(C)(4) operates to require us to designate Select as the standard offer provider for 20% of large non-residential classes in the CMP and BHE service territories, because selecting Select as the third standard offer provider in each service territory does not increase standard offer prices for any class by more than 1.5%.

As in our last solicitation, we have chosen six-month terms for both the medium and large classes to minimize the amount of time standard offer prices for either class may deviate from prevailing market prices. This action is consistent with the recommendations that we made in our December 2002 standard offer report to the Legislature. In that report, we concluded that standard offer service for the medium and large classes should not be just another supply service and that it should be designed to encourage migration to the competitive market. We stated that, in designing standard offer service to be more of a last resort default service, prices should more closely follow market changes; one approach to accomplish this would be for standard offer to have shorter terms. Our decision to accept six-month bids will have desired impact of

⁴ By our May 18 Delegation Order, we also delegated authority to accept alternative SOP Standard Service Agreement to the Director of Technical Analysis. She consulted with the Commission's legal staff in deciding to accept changes to the standard service agreement.

ensuring that standard offer prices do not deviate from market prices for any substantial period of time.

Finally, we recognize that the bidder conditions approved in this Order create certain risks and obligations for CMP and BHE. Risks imposed by the bidder conditions are properly borne by customers and not shareholders. We are informed by Commission staff that CMP and BHE agree to accept the obligations imposed on it by bidder conditions, as long as the utility is compensated for the financial consequences of satisfying those obligations. Therefore, we explicitly find that any direct or indirect costs, obligations, expenses or damages reasonably incurred by CMP or BHE, including administrative and security costs, in fulfilling its contractual obligations or exercising its contractual rights under the Standard Offer Provider Service Agreements it will enter with Independence and Select, or in satisfying the bidder conditions we have accepted, shall be fully recovered, with carrying costs, from customers either through transmission and distribution rates or standard offer rates.

This Order will be treated as designated confidential information pursuant to the Protective Order issued in this proceeding for a two-week period. After that, the confidential treatment of this Order will be removed.

Dated at Augusta, Maine, this 20th day of July, 2004.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.